



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Instruments & Controls Service Co.,

File: B-224293

Date: November 18, 1986

DIGEST

Contracting officer acted reasonably in rejecting corporate guarantee which contained no information other than an erroneous solicitation number to identify the procurement to which it pertained.

DECISION

Instruments & Controls Service Co. protests the rejection of its bid under invitation for bids (IFB) No. 02-PPB-JM-086-0038, issued by the General Services Administration (GSA) for mechanical maintenance services scheduled to begin on September 1, 1986 at the Federal Building in Binghamton, New York. GSA rejected Instruments & Controls' bid because it found that the firm was nonresponsible because it did not have adequate financial resources to perform the contract.

We deny the protest.

Instruments & Controls submitted the low evaluated bid of \$207,185, while the other bid received in response to the IFB was \$220,159. The contracting officer requested a preaward survey of Instruments & Controls' financial capability from GSA's Finance Division. The survey, dated August 6, recommended against award based on its finding that Instruments & Controls lacked the financial resources to perform the contract. The firm then volunteered to provide a corporate guarantee from its English parent company, Eurotherm International. On August 14, the contracting officer, who had yet to receive a guarantee from Eurotherm, determined that Instruments & Controls was nonresponsible. On August 26, GSA's Finance Division received a letter from Eurotherm stating that it would provide all the financial resources necessary for the satisfactory completion of the contract. The letter, signed by Eurotherm's Finance Director, referenced "Solicitation No. 02PPM/JM0860038." Since the

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solicitation number cited on Eurotherm's letter referred to "PPM" rather than the correct "PPB" designation, GSA concluded that the Eurotherm letter did not constitute a clearly binding legal commitment from Eurotherm. Since performance was needed by September 1, the contracting officer decided he could not delay further and made award to the second low bidder on August 28. Eurotherm submitted a corrected guarantee letter on September 2.

Instruments & Controls argues that its bid should have been accepted based on Eurotherm's initial guarantee letter. The protester maintains that despite the minor error in the solicitation number the initial letter sufficiently identified the project. In any event, according to the protester, GSA should have waited a couple of days for the corrected letter.

The regulations provide that to be determined responsible a prospective contractor must have adequate financial resources, or the ability to obtain them, to perform the contract. Federal Acquisition Regulation (FAR), 48-C.F.R. § 9.104-1(a) (1985). As a general matter, we will not question a contracting officer's nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination. Lithographic Publications, Inc., B-217263, Mar. 27, 1985, 85-1 CPD ¶ 357. Nevertheless, if time permits, a contracting officer should reconsider a nonresponsibility determination when a material change occurs in a principal factor on which the determination was based. CFE Services, Inc. et al.--Request for Reconsideration, 64 Comp. Gen. 19 (1984), 84-2 CPD ¶ 459. Here, the protester does not contend that its own financial picture improved materially after the contracting officer's determination; rather, it argues that its submission of a corporate guarantee should have led the contracting officer to reconsider his determination of financial incapability.

We think that the agency acted reasonably under the circumstances. The protester does not disagree with the initial finding of the preaward survey regarding its financial condition. The contracting officer's finding of nonresponsibility was based on this survey. Further, although it appears from the record that the contracting officer was willing to consider the protester's offer of a guarantee from its parent it is well settled that a bidder seeking to rely on another firm's financial capacity must establish that the other firm is legally obligated to make that capacity available to the bidder. Pope, Evans and Robbins, Inc., B-200265, July 14, 1981, 81-2 CPD ¶ 29. This is true even

when the bidder is a subsidiary of the firm providing financial backing. Engineering and Professional Services, B-219657, et al., Dec. 3, 1985, 85-2 CPD ¶ 621.

In this instance, the contracting officer did not accept the initial letter from Eurotherm because it cited the wrong solicitation number and because, therefore, he concluded that it was unclear whether Eurotherm had bound itself to provide the requisite financial backing. The letter contained no information that correctly identified the particular GSA procurement to which it pertained.

While we think that the error in the letter ("PPM" rather than "PPB" in the solicitation number) was not such that the contracting officer was compelled to reject the guarantee^{1/}, we cannot conclude that the contracting officer acted unreasonably or in bad faith by deciding that the letter might not constitute a binding commitment from the parent company to guarantee the protester for this particular procurement. It is certainly conceivable that a firm wishing to avoid a guarantee obligation would argue that an error like the one made here made the obligation void.

Further, since the initial guarantee letter was not received until August 26, less than 1 week before performance of what the agency characterizes as essential services was to begin, we do not believe that the contracting officer acted unreasonably in waiting 2 days before making award on August 28. In fact, Eurotherm's corrected letter did not arrive until September 2.

Under the circumstances, there simply was no legal requirement that the contracting officer accept the initial

^{1/} In a similar case dealing with a bid bond which bore an erroneous solicitation number, we held that the bond was acceptable where the bond contained other indicia that identified the bond with the specific solicitation. Custodial Guidance Systems, Inc., B-192750, Nov. 21, 1978, 78-2 CPD ¶ 355. On the other hand, in Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 CPD ¶ _____, 65 Comp. Gen. _____, and A & A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463, we upheld the rejection of bid bonds containing erroneous solicitation numbers because the agency was not convinced that the bond would be enforceable.

guarantee letter or a requirement that he wait further to see whether a corrected guarantee would be submitted. See Pope, Evans and Robbins, Inc., B-200265, supra.

The protest is denied.

for *Seymour Efros*
Harry R. Van Cleve
General Counsel